SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

NO: 1206

JOHN CARROLL SOX,

Petitioner,

VERSUS

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Petitioner, John Carroll Sox, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above entitled case on January 11, 1968.

CITATION TO OPINIONS BELOW

The Petitioner has been informed by the Clerk of the United States Court of Appeals for the Fourth Circuit, that the opinion was a per curiam affirmation of the action of the United States District Court for the District of

South Carolina, has not been printed and is, therefore, not available to this Petitioner. The Judgment entered January 11, 1968 is printed in the Appendix to this Petition.

JURISDICTION

The Judgment of the United States District Court for the District of South Carolina was affirmed by the United States Court of Appeals for the Fourth Circuit on January 11, 1968 and this Judgment is a final Judgment in this matter.

The jurisdiction of the Court is invoked pursuant to Title 28 United States Code, Section 1254 (1) Petitioner having asserted below and is asserting here, deprivation of rights, privileges and immunities secured by the Constitution of the United States.

QUESTIONS PRESENTED

Question One

Were the Petitioner's rights, privileges and immunities guaranteed to him by the Fourth Amendment to the Constitution of the United States violated by the law enforcemen officers, when they arrested him without warrant and searched his personal property without a search warrant there having been ample time to secure either.

Question Two

Did the manner of the search and seizure and the later use of the goods seized in effect require the Petitioner to give evidence against himself in a criminal case, thereby violating his rights and immunities under the Fifth Amendment to the Constitution of the United States.

Question Three

Did the Trial Court err under the facts of this case in refusing to Suppress the introduction of evidence seized without Warrant by the Government at the time of the arrest of the Petitioner on October 19, 1966.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involves Article IV (The Fourth Amendment) of the Constitution of the United States.

2. This case involves so much of Article Five (The Fifth Amendment) of the Constitution of the United States as reads "Nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law".

3. Title 18 Section 2315 Code of Laws of the United States.

STATEMENT OF FACTS

On October 19, 1966, in the City of Charleston, County of Charleston, in the State of South Carolina, the Petitioner was arrested by agents of the Federal Bureau of Investigation, without a Warrant and shortly thereafter jailed in Charleston, South Carolina. The Petitioner was subsequently charged in an Indictment for violation of Section 2314, Title 18 of the United States Code and Section 2315, Title 18 of the United States Code. Arrested on the same day with the Petitioner, but not at the same location, were Donald Ray Pridgen and Norman Lee Hairr. The latter two (2) being charged also with violation of Section 2314, Title 18 of the United States Code. This Petition only involves the Petitioner John Carroll Sox. The Petitioner received a court appointed attorney of Charleston, South Carolina, Mr. Morris Rosen, who represented the Petitioner in a Motion to Suppress, heard before the Honorable J. Robert Martin, Judge, United States District Court. The Motion to Suppress resulted in a finding in favor of the Government.

Subsequently, the Petitioner employed his own counsel, and upon Motion, Mr. Rosen was relieved of further representation. The matter came on to be tried in District

Court, Charleston, South Carolina, on July 10, 1967 and upon the trial of the matter, a verdict of not guilty was rendered on the second count of the Indictment (Section 2314, Title 18) and a verdict of guilty was rendered on the third count of the Indictment (Section 2315, Title 18), and the Petitioner was sentenced to ten (10) years imprisonment.

Timely Notice of Intention to Appeal was given and the matter was heard by the United States Court of Appeals for the Fourth Circuit which affirmed the action of the District Court.

The facts surrounding the arrest and detention of the Defendant are, as follows: The Petitioner owned and operated a motor lodge and restaurant in Kenly, North Carolina, about thirty-five (35) miles from Raleigh, North Carolina. On or about October 16, 1966 Norman Lee Hairr entered, at night, the premises of Carolina Casuals, Inc., a dress manufacturing establishment, at Wilson, North Carolina, also near Raleigh, North Carolina. During the robbery of Carolina Casuals, Inc., Hairr took numerous articles of women's apparel which were later discovered, or claimed to have been discovered, in a truck in Charleston, South Carolina, on October 19, 1966. With the truck at the time of the discovery of the truck and the merchandise, was the Petitioner Sox. On the trial of the matter it was determined that the Petitioner Hairr had transported the articles from North Carolina to Charleston, South Carolina. Pridgen was acquitted by the jury.

That with reference to the sequence of events as they concern this Petitioner, it appears that the Government alleges that Agent Belk of the F.B.I., received information from a "reliable source" at about 12:00 noon on October 19, 1966 that stolen property, belonging to Carolina Casuals, Inc., was in the Charleston, South Carolina area. Acting on such information, Agent Belk set up a surveillance at 2:45 P.M., October 19, 1966 at the corner of Pitt and

Montague Streets, Charleston, South Carolina. At about 3:00 P.M. he saw a U-Haul-It truck bearing North Carolina License No. 91H drive up and park at such intersection and he observed the Petitioner and one Theodore Floyd in or near the truck. The Agent followed the Petitioner, who drove the truck to the Ashley River Bridge at 3:25 P.M., and then drove the truck to the corner of Veneer and Scott Streets, Charleston, South Carolina. At 4:00 P.M. Agent claimed Petitioner parked and left the truck, got into an automobile and drove off. The Agents kept the truck under surveillance as it stood parked until about 6:30 P.M., when the Petitioner returned and was arrested. The agent had contacted Charlotte, North Carolina for information on the truck and on the alleged theft. After receiving information from Charlotte, North Carolina between 4:00 and 5:00 P.M., he then re-contacted the informant and at 6:31 P.M., on the same day, arrested the Petitioner at the truck. The petitioner denied any illegal activity and was warned by the Agent of his constitutional rights, according to the Agent. The Petitioner was required to sign a waiver and was then interviewed by the Agent in an automobile. Throughout all of this period, from the receipt of the original information, until the actual arrest, late in the evening, no Warrant of any type, either arrest or search, was secured even though the Government had all of the information necessary during the course of the afternoon, and the district attorney and the United States Commissioner were within fifteen (15) minutes distance of the spot at all times.

REASONS FOR GRANTING THE WRIT

It appears from the decisions of the Court over the years that the Court has sedulously avoided hard and fast rules and doctrine as to what is or is not violative of the Fourth and Fifth Amendments to the Constitution; and has consistently held that each case must be decided on its own facts.

The Fourth Amendment has always been interpreted as protection of the privacy of the individual.

But this Amendment prohibits unreasonable searches and by inference permits reasonable searches. *Carroll v. United States*, 267 U. S. 132, 147; 69 L. Ed. 543, 548; 45 S.Ct. 290.

The historical purpose of this amendment was to protect the privacy of the individual from over-zealous officers and place the protection of that privacy under the considered judgment of a magistrate.

In *Go-Bart Importing Co. v. United States*, 282, U. S. 344, 357; 76 L. Ed. 374, 382; 52 S. Ct. 153, this court stated:

> "There is no formula for the determination of reasonableness. Each case is to be decided on its own facts and circumstances."

The Petitioner in this case holds that under the circumstances the search of his truck and the impounding of the goods found therein without a search warrant was not necessary or legal and in fact amounted to a fishing expedition in search of evidence with which to secure a conviction and that although there may have been such probable cause as to render his arrest without a warrant legal, the search and seizure without a warrant was nevertheless illegal. As this court stated in the *Go Bart Importing* case, *supra* "an arrest may not be used as a pretext to search for evidence." Likewise in the *Carroll* case, *supra*, the Court stated:

> "The mere fact that there is a valid arrest does not *ipso facto* legalize a search and seizure."

In the present case, the government agents first received notice through an informant that there was present in the City of Charleston a truck loaded with stolen ladies garments and that this truck would be at a certain spot at about 3:00 P.M. This information came to the government agents about 12:00 noon, October 19, 1966. (A 2).

That at this point, the government did not have enough information upon which to base either an arrest warrant

or a search warrant is admitted; what they did have was a "hot tip" from an informer whom agent Belk insisted was reliable. (A 2) although admittedly information obtained from this source had never resulted in a conviction or even served as a basis for a prosecution. (A 9).

Based on the information received, the Federal Bureau of Investigation set up a surveillance in the area of Pitt and Montague Streets, (A 2) the spot at which the informer had predicted the truck containing the garments, driven by a large man would appear.

At 3:00 P.M., as predicted, a U-Haul It truck, driven by a large man appeared at Pitt and Montague Streets.

At that moment, it is submitted, the government had sufficient facts in its possession to constitute probable cause and sufficient information to constitute a basis for the issuance of a search warrant, provided, however, that the agents were as convinced of the reliability of their informer as government testimony would indicate (A 2-9-18), an informant whose information had never produced either a prosecution or a conviction. (A 9).

They did not make an arrest, but Mr. Harry C. Belk, assisted by five or six other agents of the Federal Bureau of Investigation continued surveillance.

The truck was moved by the same driver and driven first to another location described as the area of Patio #1 and the Fork Restaurant, then after a short time to an area described as Veneer and Scott Streets (A 3) and there the truck was parked at about 4:00 P.M. and there the truck remained under the watchful eyes of five or six F. B. I. agents until 6:31 P.M. when the actual arrest of this Petitioner occurred.

The government would have us believe that this long wait was occasioned by the fact that they were waiting for information requested through their Charlotte offices.

It strains credulity to be asked to believe that, if in fact they believed their informant to be reliable, they would

have permitted the suspect whose identity they claim they did not know, to get into an automobile and drive away, and not become alarmed, as a period of two and one-half hours passed before his return, but would sit and placidly watch a parked truck. They had no means whatsoever of knowing whether or not the suspect had been alerted to the surveillance and no means of knowing whether or not he would ever return.

They would have us believe that they did not move because they were waiting for radio information from North Carolina and this information, when it came, was very little more than the officers already had at their command; simply that there had been a recent theft of ladies garments from "Carolina Casuals" in Wilson, North Carolina and an apparent general description of the garments. (A 5).

This information came between 4:00 and 5:00 o'clock (A 14) and still the agents waited and watched for another one and one-half or two hours, and all the while the United States Attorney and a U. S. Commissioner were within a few blocks; just a few minutes away.

Here, as in the case of *Trupiano v. United States*, 334 U. S. 399, 92 L. Ed. 1663, 685 S. Ct. 1229, the Court stated:

> "No reason was given for not obtaining a search warrant except the inconvenience to the officers and some slight delay necessary to prepare papers and present the evidence to a magistrate, these are never very convincing reasons."

To summarize, for two and one-half hours, these agents, of whom there were six or seven, had the truck within their sight; in fact, it might be said in their possession.

They very definitely knew the place to be searched, they knew at three o'clock a fair description of the goods they sought, they knew between four and five o'clock, a more accurate description of the goods and yet they made no move to comply with the law which governed their actions and

they gave no reason at the hearing on the Motion to Suppress or at the trial.

Had there been one agent alone or even two agents, their actions might have been understandable, but with five, six or more, nothing appears here but an utter disregard of the constitutional mandate.

Assuming that the arrest of the Petitioner was lawful, the officers certainly had a right to search his person; a right based on the necessity of searching for weapons or other means by which the person might escape or injure the officers, but does it follow that the right extended to a search of his property. We believe not and it would appear that this court takes a similar attitude as in *United States v. Lefkowitz* 285 U. S. 452, 464; 76 L. Ed. 877, 882, 52 S. Ct. 420; 82 A.L.R. 775. The court here found that the search of the person of Lefkowitz was lawful and that the things taken might be used against him, but held that the things seized when the office and furniture were explored did not belong in the same class and the Court held: "To the firmly rooted proposition that what are called general exploratory searches are forbidden."

In the instant case when, at long last, an arrest was made and again assuming that under the circumstances the arrest was legal without an arrest warrant, the Petitioner was coerced into aiding a search. He was asked to give the keys to the van body of the truck and he gave a set of keys but not the right set. The right keys were finally obtained by threat. (A 31, 34).

Coercion cannot be denied; the Petitioner was under arrest, seated in a government automobile, surrounded by government agents; Mr. Belk says one; although there had been five or six and no indication that any had yet been sent away.

The Petitioner was threatened at least with a strip search and possibly more since the government admitted that he was coerced. (A 34).

It would appear that this case falls within the principle of *Gouled v. United States*, 255 U. S. 298, 303, 304; 65 L. Ed. 647, 650, 651; 41 S. Ct. 261.

In this case, the court said:

> "In practice the result is the same to one accused of crimes, whether he be obliged to supply evidence against himself, or whether such evidence be obtained by an illegal search of his premises and seizure of his private papers. In either case, he is the unwilling source of the evidence and the Fifth Amendment forbids that he shall be compelled to be a witness against himself in a criminal case."

The situation can be no better discussed than was done by Mr. Justice Jackson in his dissenting opinion in the case of *United States v. Robinowitz*, 339 U. S. 56; 70 S. Ct. 430; 94 L. Ed. 653 (1950) where he said:

> "To tear 'unreasonable' from the context and history and purpose of the Fourteenth Amendment in applying the narrow exception of search as incident to an arrest is to disregard the reason to which reference must be made when a question arises under the Fourth Amendment. It is to make the arrest an incident to an unwarranted search instead of a warrantless search incident to an arrest, The test by which searches and seizures must be judged is whether conduct is consonant with the main aim of the Fourth Amendment. The main aim of the Fourth Amendment is against invasion of the right of privacy as to ones effects and papers without regard to the result of such invasion. The purpose of the Fourth Amendment was to insure that the existence of probable cause as the legal basis for making a search was to be determined by a Judicial Officer before ar-

rest and not after, subject only to what is necessarily to be excepted from such requirement.

The justification for intrusion into a man's privacy was to be determined by a magistrate, uninfluenced by what may turn out to be a successful search for papers, the desire to search for while right, may be the very reason for the Fourth Amendment's prohibition.

The provisions did not regard judicial authorization as a formal requirement for a piece of paper, they deemed a man's belongings part of his personality and his life."

The Government would have us accept its actions as caused by necessity because a motor vehicle was involved; however, permission to search a motor vehicle, boat or van is rooted in necessity, even in the *Carroll* case, *supra*, the court said:

"In cases where the securing of a warrant is reasonably practical, it must be used."

And in *United States v. Jeffers*, 342 U. S. 48; 72 S. Ct. 93; 96 L. Ed. 59, it is said:

"Over and again this court has enjoined that the mandate of the Amendment requires adherence to judicial process."

The importance of the Fourth and Fifth Amendment cannot better be shown than by quoting the language of the court in the *Gouled* case, *supra*, where it referred to *Boyd v. United States*, 116 U.S. 630 29 L. Ed. 746; 6 S. Ct. 524; *Weeks v. United States*, 232 U.S. 383, 58 L. Ed. 652; 34 S. Ct. 341; *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 64, L. Ed. 319; 40 S. Ct. and said:

"the importance to political liberty and to the welfare of our country is the due observance of the rights guaranteed under the Constitution by

these two amendments. The effect of the decisions cited is:

> That such rights are declared to be indispensable to the full enjoyment of personal security, personal liberty and private property, 'that they are to be regarded as of the very essence of Constitutional Liberty.'
>
> It has been repeatedly decided that these amendments shall receive a liberal construction, so as to prevent encroachment upon or gradual depreciation of the rights secured by them, by imperceptable practice of courts, or by well intentioned but mistakenly over-zealous executive officers."

The principles heretofore enunciated appear to be applicable to all cases involving the Fourth and Fifth Amendments.

In this respect, we quote from the opinion of Mr. Justice Black in the case of *Cooper v. State of California*, 386 U. S. 58; 17 L. Ed 2nd, 730; 87 S. Ct. 788:

> "We made it clear in Preston that whether a search and seizure is unreasonable within the meaning of the Fourth Amendment depends upon the facts and circumstances of each case and pointed out, in particular, that searches of cars that are constantly movable may make the search of a car without a warrant a reasonable one although the result might be the opposite in a search of a home, a store, or other fixed piece of property. 376 U. S. at 366-367, 11 L. Ed. 2d at 779, 780. In Preston the search was sought to be justified primarily on the ground that it was incidental to and part of a lawful arrest. There we said that 'once an accused is under arrest and in custody, then a search made at another place,

without a warrant, is simply not incident to the arrest."

We cannot better summarize the situation involved in this case than by quoting the language of Judge Learned Hand in *United States v. Kirchenblatt*, (C.A. 2nd N. Y.) 16 F. 2d. 202, 203, quoted with approval in the *Lefkowitz* case *supra*:

> "Nor should we forget that what seems fair enough against an inconsequential huckster of bad liquor may take a very different face, if used by a government determined to suppress political opposition under the guise of sedition."

As the learned justice said, the progress is too easy, if the bulwarks are eroded by permissive authorization of forbidden conduct, to the police state.

There is ample law and precedent to permit thorough investigation of any suspected criminal offense or activity, to permit police or law enforcement officers to evade the laws application for reasons of convenience or any other reason cannot but lead eventually to the destruction of the security of the individual as to his person or property.

For the foregoing reasons, it is respectfully submitted that the Writ of Certiorari should be granted.

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